

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

BRUCE WRIGHT and JORGE VALDES,
individually and on behalf of all others similarly
situated,

Plaintiffs,

v.

KELLER WILLIAMS REALTY, INC.,

Defendant.

NO. 1:18-cv-00775-RP

(lead)

THOMAS SAMATARO and WILLIAM
MISKOKOMON, individually and on behalf of
all others similarly situated,

Plaintiffs,

v.

KELLER WILLIAMS REALTY, INC., M77,
LLC, and GREAT DAY REAL ESTATE, LLC,

Defendants.

NO. 1:21-cv-76-RP

ROBERT ASHER, individually and on behalf of
all others similarly situated,

Plaintiffs,

v.

KELLER WILLIAMS REALTY, INC.,

Defendant.

NO. 1:20-cv-835-RP

**FIRST AMENDED CONSOLIDATED CLASS ACTION COMPLAINT
AND DEMAND FOR JURY TRIAL**

Plaintiffs Bruce Wright, Jorge Valdes, Robert Asher, Thomas Samataro, and William

Miskokomon bring this Consolidated Class Action Complaint and Demand for Jury Trial against Defendants Keller Williams Realty, Inc. (“Keller Williams”), M 77, LLC doing business as Keller Williams Paint Creek & Somerset (“KW M77”), and Great Day Real Estate, LLC doing business as Keller Williams Troy Market Center (“KW Troy Market Center”) to stop Defendants from directing agents to violate the Telephone Consumer Protection Act by making unsolicited, prerecorded and autodialed calls to consumers *without their consent*, including calls to consumers registered on the National Do Not Call registry, and to otherwise obtain injunctive and monetary relief for all persons injured by Defendants’ conduct. Plaintiffs, for this Complaint, allege as follows upon personal knowledge as to themselves and their own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by their attorneys.

INTRODUCTION

1. Keller Williams is a real estate franchise started with a single office in Austin, Texas in 1983 by Gary Keller and Joe Williams. Since that time, Keller Williams has grown to more than 900 locations with over 170,000 agents worldwide, becoming the largest real estate franchise in the world.

2. Keller Williams differentiates itself from other real estate franchises through its training and coaching programs, through which Keller Williams directs the activities of its franchisees and their agents, including their marketing efforts. In fact, “Gary Keller has often said that Keller Williams is ‘a training and coaching company that also happens to be in the business of real estate.’”¹

¹ From the Keller Williams Education website, available at, <http://www.kw.com/kw/education.html> (last accessed March 28, 2018).

3. As a result, in 2015, Training Magazine recognized Keller Williams “as the world’s #1 training organization across all industries.”² And, both before and since then, Keller Williams has consistently placed in the Top 5 on the Training 125, which ranks companies’ excellence in employer-sponsored training and development programs.³

4. Relevant here, for the last several years, a key component of Keller Williams’ marketing plan for franchisees and agents instilled through its award winning training and coaching programs has been for agents to purchase lists of potential leads for real estate listings from lead provider companies such as Landvoice, Vulcan7, Mojo, and RedX, companies that generate leads from a variety of sources, use public records searches to match phone numbers to those leads, including cellular telephone numbers and other numbers registered on the National Do Not Call Registry, and provide web-hosted autodialers for agents to make marketing calls and transmit prerecorded voice messages *en masse* to those numbers without the recipients’ consent.

5. This case addresses consumers’ right to be left alone from unsolicited, intrusive, and incessant calls from estate agents promoting their realty services at the behest of Keller Williams and the franchisees that promote Keller Williams’ lead generation model.

PARTIES

6. Plaintiff Bruce Wright is a resident of Point Roberts, Washington.
7. Plaintiff Jorge Valdes is a resident of Tustin, California.
8. Plaintiff Robert Asher is a resident of Sunset Valley, Texas.
9. Plaintiff Thomas Samataro is a resident of Macomb, Michigan.

² KW Maps Coaching, available at, <http://mapscoaching.kw.com/coaches/dianna-kokoszka>.

³ <https://blog.kw.com/keller-william0s-named-top-training-organization-worldwide>

10. Plaintiff William Miskokomon is a resident of Shelby Township, Michigan.

11. Defendant Keller Williams is a Texas corporation headquartered in this District.

12. Defendant KW M77 is a Michigan company headquartered in Rochester, Michigan. KW M77 is the operating company for one or more Keller Williams franchise locations.

13. Defendant KW Troy Market Center is a Michigan company headquartered in Troy, Michigan. KW Troy Market Center is the operating company for one or more Keller Williams franchise locations.

JURISDICTION AND VENUE

14. This Court has federal question subject matter jurisdiction over this action under 28 U.S.C. § 1331, as the action arises under the Telephone Consumer Protection Act, 47 U.S.C. §227 (“TCPA”).

15. This Court has personal jurisdiction over Keller Williams because it resides in this District, and over KW M77 and KW Troy Market Center because they do significant business with Keller Williams in Texas as Keller Williams franchisees and this case arises from the business it conducted with Keller Williams in Texas.

16. Venue is proper in this District under 28 U.S.C. § 1391(b) because Defendants reside in this District and/or do significant business in this District and the state of Texas, and because the wrongful conduct giving rise to this case was directed from and/or occurred in this District.

COMMON ALLEGATIONS

Keller Williams Directs, Authorizes, and/or Ratifies Its Brokers and Agents’ Telemarketing Conduct

17. Defendant Keller Williams directs its agents to cold call consumers. This

instruction is at the heart of Keller Williams’ training and is directed from the founder and leader of Keller Williams.

18. Gary Keller, as co-founder, chairman, and CEO of Defendant Keller Williams, instructs Keller Williams agents that they must approach lead generation – which he specifically describes to include cold calling consumers using calling software and services– in a systematic way, writing in his books and other materials:

- “Peak performance in sales requires you to have a systematic marketing-based Lead-Generation Model,” and “success in the lead-generation game is in the numbers, so you simply can’t overdo it. Again, let me reiterate that you can never have too many leads.”
- “The issue of leads should always be at the forefront of your business consciousness.”
- “No matter how you slice it, lead generation will almost always come down to a game of numbers. For effective lead generation, you need to be systematic.”

19. Gary Keller wrote the book *“Millionaire Real Estate Agent”* (“MREA”) which outlines in detail the daily habits a realtor needs to perform to be a millionaire real estate agent and the organizational structure a brokerage needs to be in order to achieve the highest level of production. This book is touted to Keller Williams agents as the foundational book to build their real estate empire.

20. In MREA, Gary Keller outlines the exact steps and organizational structure of how a real estate agent can build a real estate empire. Gary Keller places “telemarketing” as one of the key pillars of the system.

Prospecting (Proactive and Direct)	Marketing (Proactive and Indirect)
1. Telemarketing <ul style="list-style-type: none"> <input type="checkbox"/> FSBO (For Sale By Owner) <input type="checkbox"/> Expireds <input type="checkbox"/> Just Solds <input type="checkbox"/> Just Listed <input type="checkbox"/> Past Clients <input type="checkbox"/> Allied Resources <input type="checkbox"/> Geographic Farm Area <input type="checkbox"/> Apartments <input type="checkbox"/> Corporations <input type="checkbox"/> Builders <input type="checkbox"/> Banks <input type="checkbox"/> Third-Party Companies 	1. Advertising <ul style="list-style-type: none"> <input type="checkbox"/> Newspapers <input type="checkbox"/> Personal Vehicles <input type="checkbox"/> Radio <input type="checkbox"/> Magazines <input type="checkbox"/> Bus Stop Benches <input type="checkbox"/> Billboards <input type="checkbox"/> Yellow Pages <input type="checkbox"/> Television <input type="checkbox"/> Grocery Carts <input type="checkbox"/> Moving Vans 2. Promotional Items (Magnets, Calendars, etc.) 3. Internet Websites 4. Direct Mail <ul style="list-style-type: none"> <input type="checkbox"/> Postcard Campaigns <input type="checkbox"/> Newsletter Campaigns <input type="checkbox"/> Just Sold/Just Listed Cards <input type="checkbox"/> Special Events Cards



21. Gary Keller has been quoted in Keller Williams videos promoting Keller Williams' approach to lead generation for agents: "We want every agent to wake up in the

morning and put in 3-4 hours of lead-generation time before noon.”⁴

22. Keller has even described obtaining lists of leads and telemarketing to them as the best means of expanding from a single agent operation to a team (like the type of team of Defendant Keller Williams Troy Market Center).

23. Consistent with this, Keller Williams provides its agents KW Command, which is a CRM that comes with a built-in autodialer which can call or text consumers with pre-defined parameters called a smart plan where the Keller Williams agents can call or text consumers every few days or weeks or based on a triggered event.⁵

24. Defendant Keller Williams also provides telemarketing training across its organization through Keller Williams University (an online training site available to all Keller Williams agents), KW Maps Coaching, KW BOLD, and other courses that are substantively the same as the training Keller Williams franchises provide to agents.

**Keller Williams Promotes Cold Calling
Through Keller Williams University**

25. Keller Williams provides training to its agents by posting videos in Keller Williams University on how to use dialers such as the Mojo Dialer, including videos entitled “Mojo Walkthrough,” “Mojo integration with Edge,” “Push Contacts from Mojo to Command,” and “Mojo Mastery: Master Follow Up and Prospecting.”⁶

26. In Keller Williams Connect⁷ and also in Keller Williams University,⁸ Keller

⁴ https://www.youtube.com/watch?time_continue=1&v=8yuk1tslck

⁵ <https://www.youtube.com/watch?v=jj5mRlofNj4>

⁶ <https://www.kwconnect.com/search?q=MOJO&tfilter=ALL+CONTENT>

⁷ https://youtu.be/k2Qg_syjC1Q - 22 seconds

⁸ <https://docplayer.net/16511822-Lead-generation-36-12-3.html> - Page 1

Williams offers a foundational course entitled “Lead Generation 36:12:3.”

27. The Keller Williams “Lead Generation 36:12:3” course is designed to train agents lead generation systems to produce 36 transactions in 12 months, by doing 3 hours of lead generation per day. The course also provides scripts to the Keller Williams agents to use while soliciting consumers on the phone.

28. In the course blueprint for “Lead Generation 36:12:3,” the trainers spend at least one session on teaching agents how to cold call “Expireds” and “FSBOs” who, by definition, have not given consent to be called. In this session, the Keller Williams instructor is instructed in the course outline ***“Prepare in advance by making sure there is a telephone for making calls during the Power Session. Bring phone numbers for current FSBO and Expired listings.”***⁹ Agents are given scripts provided by Defendant Keller Williams and are trained in role-playing FSBO and expired scripts. The trainer then teaches these agents to repeat this activity for 3-hours every day i.e. “the 3 Hour Habit” to become a successful lead generator.

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[https://images.kw.com/connect/attachments/1204307816200_Instructor_guide_and_blueprint.p
df](https://images.kw.com/connect/attachments/1204307816200_Instructor_guide_and_blueprint.pdf)

Power Session	Objective	Notes on Content	Exercises
8 FSBOs & Expired Listings	<p>Presents a number of ways agents can win with homeowners who have already identified themselves as ready to sell—For Sale By Owners and sellers with Expired Listings. <u>Experts share their tips and scripts for success. Learn how to find, cultivate, and capture these great leads.</u></p> <p><u>Notes on Pacing:</u></p> <ul style="list-style-type: none"> • Spend only a minute or two on each slide in order to have enough time for exercises • 104 minutes for exercises • 16 minutes for content delivery 	<p>Slides and notes in the instructor guide draw attention to the most important points.</p> <p>Agents will have to read most of the Power Session outside of class. <u>Practicing scripts and calling FSBOs or Expired Listings is the most important part of the class so make sure you don't compromise on time allocated for those activities.</u></p> <p><u>Prepare in advance by making sure there is a telephone for making calls during the Power Session. Bring phone numbers for current FSBO and Expired listings. (See instructor note for the exercise at the end of the Power Session).</u></p> <p>When teaching in Canada, eliminate time for practicing Expired Listing scripts. That time can be used on FSBO scripts and calls to FSBOs.</p> <p>Sample forms are in the Appendix and files are on the Toolkit CD. <u>Scripts are also on the Toolkit CD.</u></p> <p>Note: If possible, consider teaching this session is <u>2½ or 3 hours.</u></p>	<ol style="list-style-type: none"> 1. Where You Are Today 2. What Will Make This a Great Training Experience 3. Why Houses Do Not Sell 4. FSBO Contacts 5. Role-Play FSBO Scripts 6. <u>Role-Play Expired Scripts</u> 7. <u>Make Calls to FSBO and/or Expired Listings</u> 8. Power Session Aha's 9. Your Lead Generation Action Plan 10. <u>The 3 Hour Habit</u>

29. More generally, Keller Williams provides a “Keller Williams University Scripts Catalog” specifically on “Lead Generation” as part of its training to agents in Keller Williams University.¹⁰ These scripts produced by Defendant Keller Williams “are the result of collaboration with many different sources – through brainstorming with other [Keller Williams] Mega Agents, from ideas and tips shared by coaches and consultants, and through the training events that they have attended.” This script catalog is available on Keller Williams University online to all real estate agents.

¹⁰ <https://www.kwconnect.com/search?q=internet+lead+generation>

The screenshot shows a search results page for 'internet lead generation'. At the top, there is a search bar with the text 'internet lead generation' and a magnifying glass icon. To the right, there is a dropdown menu labeled 'ORDER BY:' with 'Newest First' selected. Below the search bar, there are two course listings. The first listing is for 'MREA: Systematizing Lead Generation' with a red icon and a description: 'This course will help team members create lead generation systems that support millionaire-level...'. It has 11894 views, 10 likes, and 10 comments. The second listing is for 'KWU Scripts Catalog: Volume 3 - Lead Generation' with a white icon and a description: 'Never again be at a loss for words! This comprehensive collection of the best lead generation...'. It has 24820 views, 11 likes, and 15 comments. Both listings have buttons for 'UPCOMING COURSES' and 'COURSE MATERIALS'. At the bottom, there is a link to 'SEE ALL COURSE RESULTS'.

30. Keller Williams’ scripts specifically direct agents on the words to say when cold calling, calling expired listings and FSBOs, and cold calling all phone numbers in a certain area i.e., “geographic farming.”¹¹ The scripts even include “objection handlers” for when consumers object to being called.

31. Here is a sample of one of the *cold calling scripts* Keller Williams trains agents on. It is clear from the script that the caller has no previous relationship with the consumer and that the consumer never consented to receive these calls.

¹¹<https://static1.squarespace.com/static/599ef9efe4fcb56f2029cbb7/t/59f0d5f5fe54ef8dcdab30c9/1508955638543/KWU+-+Scripts-Buyers+-+Manual+v3.2.pdf> and <https://static1.squarespace.com/static/599ef9efe4fcb56f2029cbb7/t/59f0d5c6f09ca48969fad1c0/1508955591452/KWU+-+Scripts-sellers+-+manual+v3.2.pdf> These scripts are currently available to KW agens on KWconnect <https://www.kwconnect.com/search?q=Scripts> and there are courses taught from Keller Williams University on how to use these scripts.

Asking for Prospect's Contact Information: Script #4

AGENT: Hi, am I speaking with the owner of the home?

PROSPECT: Yes.

AGENT: My name is _____, with Keller Williams Realty. I work with a lot of buyers and sellers in the area and I was wondering: how much time will you take before you'll consider interviewing the right agent for the job of selling your home?

PROSPECT: *I hadn't considered hiring an agent.*

AGENT: Well, what has to happen before you'll consider hiring a powerful agent like me for the job of selling your home?

PROSPECT: *I'm really not interested.*

AGENT: Is it okay if I give you a call back in another week?

PROSPECT: Sure.

Asking Prospect for Leads: Script #1

AGENT: Good morning. My name is _____. I'm from the _____ (group). We just listed a home in your neighborhood.

or

We have a home for sale right here in your neighborhood. I'm walking through the neighborhood to pass around a little information to everyone and to ask you if you know anyone who's looking to move into the neighborhood that we may help out.

PROSPECT: *No one that I can think of right now.*

AGENT: Great. Thanks for thinking about that. Who do you know that's looking to just buy or sell, in general?

PROSPECT: *I don't know anyone.*

AGENT: How about yourself? When do you plan on moving?

PROSPECT: *Probably no time soon.*

AGENT: Thank you very much for your time. The next time I'm in the area, or when I have an open house, I'll stop by and say hello. Goodbye.

32. The scripts specifically train the agents on what to say, to identify as working for Defendant Keller Williams, and to solicit for business.

33. The Keller Williams script catalog is loaded with different scripts within each category. For example, in the cold calling category alone, Keller Williams provides at least 10 different cold calling scripts.

Cold Calling.....170

Positioning Yourself as the Neighborhood Real Estate Specialist: Script #1	170
Positioning Yourself as the Neighborhood Real Estate Specialist: Script #2.....	170
A Script for Your Team to Use on Your Behalf: Script #1.....	171
A Script for Your Team to Use on Your Behalf: Script #2.....	171
Announcing a Just-Sold Home in Your Neighborhood: Script #1.....	172
Announcing a Just-Sold Home in Your Neighborhood: Script #2.....	172
Announcing a Just-Sold Home in Your Neighborhood: Script #3.....	173
Announcing a Just-Listed Home in Your Neighborhood: Script #1	174
Announcing a Just-Listed Home in Your Neighborhood: Script #2	175

34. On the subject of calling expired listings (which by definition the agent has no consent to call), Keller Williams provides at least 20 different scripts on the “First Call to an Expired Listing.”

EXPIRED LISTINGS..... 23

First Call to Expired Listings Seller.....	23
Number One Agent in Properties Sold: Script #1.....	23
Number One Agent in Properties Sold: Script #2.....	23
If I Had a Buyer for You, Would You Consider Selling?: Script #1.....	24
Qualifying an Expired Listings Seller: Script #1.....	25
Qualifying an Expired Listings Seller: Script #2.....	25
Qualifying an Expired Listings Seller: Script #3.....	26
Qualifying an Expired Listings Seller: Script #4	26
Qualifying an Expired Listings Seller: Script #5.....	28
Qualifying an Expired Listings Seller: Script #6.....	28
Qualifying an Expired Listings Seller: Script #7.....	29
Exploring the Four Reasons Homes Don't Sell: Script #1	32
Specializing in Hard-to-Sell Homes: Script #1.....	32
Issuing a Verbal Guarantee: Script # 1	33
Are You Still Interested in Selling?: Script #1	33
Leaving a Voice Mail Message: Script #1	33
Leaving a Voice Mail Message: Script #2	33
Leaving a Voice Mail Message: Script #3	33
Leaving a Voice Mail Message: Script #4	34
Leaving a Voice Mail Message: Script #5	34
Leaving a Voice Mail Message: Script #6	34

35. Keller Williams provides another 20 different scripts on “The First Call to a FSBO” and another 9 scripts on cold calling within a “Geographic Farm.”

36. Keller Williams even provides scripts when consumers object to the onslaught of

calls and say “I’m Tired of Agents Calling Me!” Keller Williams instructs their agents to use the following script and still push for the agents to solicit the consumer for their listing despite the consumer’s objection.

I’m Tired of Agents Calling Me: Script #1

[Start asking questions and then get into the normal script. I’ll do a sense-of-humor approach, in some cases. Humor can work wonders, if done right]:

FSBO: *I’ve had so many agents telephone me: I’m about to go crazy!*

AGENT: Whoa, you’ve had a bad day—those agents are really eating you up, eh? The best way to get rid of those callers is to list your property. When do you need to move?

Keller Williams Promotes Cold Calling Through their KW Maps Coaching and Bold Programs

37. KW Maps Coaching, which is the coaching and educational arm of Defendant Keller Williams, trains agents and team leaders on lead generation. Cold calling is central to their lead generation tactics.

38. Diane Kokoszka is the CEO of KW MAPS Coaching, recommends that agents call for sale by owner (“FSBO”) and expired listings (i.e., listings for which the listing agreement between the seller and their realtor has expired without a sale of the property) to generate listings. In Kokoszka’s words “*call them first and call them often*” and she offers scripts to her trainees on calling expireds.¹² This shows a clear direction from Defendant Keller Williams for agents to call consumers who have never given consent to receive calls from Keller Williams agents.

¹²

<https://static1.squarespace.com/static/599ef9efe4fcb56f2029cbb7/t/59f0dab090bccea6185a06b5/1508956848978/Power+Session+08+FSBO+Expired+FINAL+STUDENT+061217.pdf>

39. For example, on KW Maps Coaching, they teach a paid course on “Marathon Lead Gen and Conversion” which teaches “powerfully systems and scripting from Richard Schulman, the rainmaker of a 20 person team that has consistently ranked among the top KW teams.”¹³ ¹⁴ In that training session he states “There are different kinds of calls you will be making, if you are circle dialing or cold dialing, that’s a lot higher volume of calls and you will be using an autodialer, so we will have a training specifically for that within the class.”¹⁵ Schulman goes on to train Keller Williams agent that “originally when we started this class 5 years ago we called it human autodialer, now a lot of you have easier and less expensive access to autodialers, and I believe you should be using an autodialer. What I find is that the autodialer solves a lot of problems by generating the numbers ahead of time and preventing you from stopping. We will give an autodialer training to go through this.”¹⁶

40. In another KW Maps Coaching course, Schulman teaches “We are going to use our technology to improve our business and improve our efficiency. We are going to talk about using our triple-line dialers, we are going to talk about Sly-Dial, and text messaging.”¹⁷

¹³ <https://mapscoaching.com/coaching-programs/marathon-lead-gen-and-conversion/>

¹⁴ Richard Schulman is Keller Williams number 1 sales group in Los Angeles and was the number two sales team in Keller Williams in 2014-2015. <https://richardschulman.com/about-us/about-richard/>

¹⁵ <https://www.youtube.com/watch?v=3wjEEe-Jva4> He goes on to say “for circle dialing you should be able to make 150 calls per hour.”

¹⁶ <https://www.youtube.com/watch?v=3wjEEe-Jva4>

¹⁷ <https://www.youtube.com/watch?v=zCdGEnb0V-4>

Text/Dialer/Tech

What if we could use technology to contact our database more and better?

Have you tried texting your database?

Email blasting your database?

Auto Dialing? or Sly dialing?

GROUP

41. Sly dial provides real estate agents with the ability to send prerecorded voice messages to consumers like the ones Plaintiffs received in this case received.

42. In another KW MAPS course called “Take Control of Your Market Through Listings,” they train agents on lead generation and part of that is calling expired listings and for sale-by-owners using scripts supplied by Keller Williams.

Set Your Sellers up for Success

Lead Generate for Listings	Lead Capture & Follow Up	Seller Pre-Qualification
<ul style="list-style-type: none"> • Expired Listings • For Sale By Owners (FSBO's) • Door Knocking • Sphere of Influence • Client Referrals • Agent Referrals 	<ul style="list-style-type: none"> • Ready, Willing, Able seller leads should be set for a Listing Consultation Appointment • All other leads should be entered into your CRM and added to a touch campaign • Follow up/Follow the campaign 	<ul style="list-style-type: none"> • Goal is to set a Listing Consultation • Be the Local Economist of Choice – Know your market! • Handle Objections

GROUP

¹⁸ <https://www.youtube.com/watch?v=uqBAcmy8F2M>

43. In another KW MAPS course taught by Jackie Kravitz and Bill Crespo “Doing the 5” the KW Maps Coaches train agents to call FSBOs, expireds, just-listed, just sold, and consumers in a geographic area.¹⁹ “Power-Up Prospecting” will teach the “lead sources” to call these leads and well as the scripts to use on the call. Included in this training is what to say when expired consumers are mad that you have called them and other objections made by consumers.²⁰

44. In another course taught by Jackie Kravitz “How to Take 2 Listings per Weeks with FSBO’s and Expired Listings” she says “Do you call back the ones that hang up on you? Yes, yes, 100%”²¹

45. In another KW MAPS coaching course called “Introduction to ISA Coaching” taught by team leader of The Heyl Group, Seth Goldberg, the top grossing sales commission team of KW Management, LLC d/b/a Keller Williams Austin SW (“KW Austin SW”), trains Keller Williams agents in the tools to generate leads by obtaining on expireds, FSBOs, withdrawals from Vulcan7 and to obtain circle prospecting data from Cole Resource and to call these leads through the Mojo dialer.²²

46. Seth Goldberg teaches in his “Introduction to ISA Coaching” course “Mojo is an awesome dialer -it’s a triple dialer...you can sit there with a headset on and dial three numbers at once. I think it depends on what state your in as well, I know there has been some legal stuff going on but you can do a triple dialer and it’s not ringing in your head or anything like that, they just pick up, their information is there, and you just go for it. We have people making 2,000 – 3,000 dials per day. So where are we getting that data from? Vulcan7 for expireds, FSBOs,

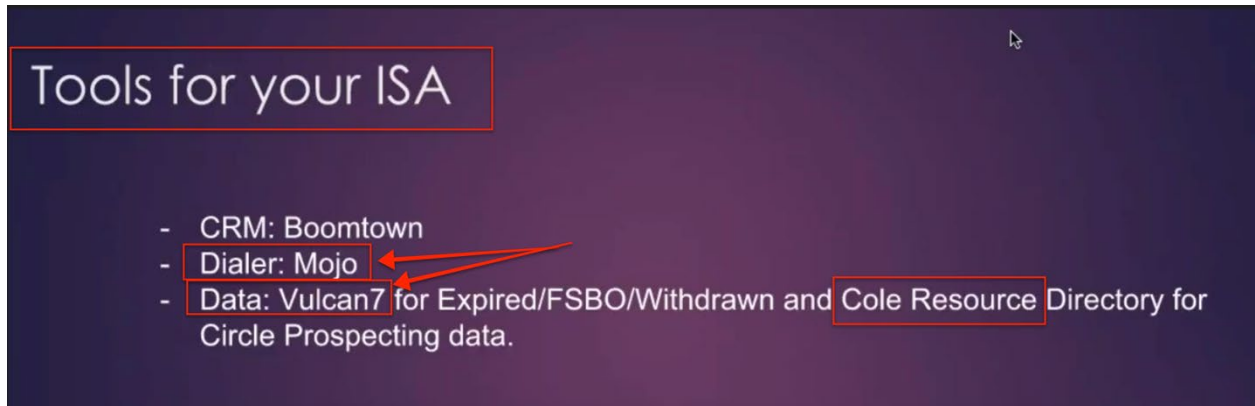
¹⁹ <https://www.youtube.com/watch?v=PXvsv5nbvsU>

²⁰ https://www.youtube.com/watch?v=ubl_k8BaOqY

²¹ <https://www.youtube.com/watch?v=gwxRRslis-c>

²² <https://www.youtube.com/watch?v=0EgWTSL99jw>

²³ Ben Pickthorn the other trainer on this course states that his Keller Williams team “We do use Mojo – the triple line dialer...and then we use Landvoice for our expirds and FSBO data...Vulcan7 has a dialer built into as well...and the cream of the crop is Cole Resource for circle prospecting, that’s what we use as well.”



47. In this course, the KW MAPS coaches also teach “What to track – Dial Time, Dials, Contacts, Appointments.” In addition, they state that an ISA should be “6 hours on the dialer, 1 hour admin, and 1 hour training/breaks.”

²³ <https://www.youtube.com/watch?v=0EgWTSL99jw>

Training, Accountability, and Retention

- I do it, We do it, You do it.
- Introduce 1 script at a time to ensure Mastery
- Self Driven (especially for the Jr. Agent model)
- Utilize the 30-60-90 day plan for accountability in the role.
- What to track:
 - Dial Time, Dials, Contacts, Appointments
- Full Time: 6 hrs on the dialer, 1 hr Admin, 1 hr training/breaks
- Use 411 document and meet weekly with your ISA.
- Provide Additional Training Opportunities: KW Events, BOLD, ISA Coaching, Quantum Leap.

Keller Williams Promotes Cold Calling Through their National Events

48. Keller Williams promotes cold calling at its national event for its agents, including Keller Williams Reunion, and online through Keller Williams University.

49. For example, Josh Burnett gave a presentation at a Keller Williams Reunion “Get Leads with the Top Ten Lead Generation Sources.” Josh Burnett is a Keller Williams University approved real estate agent trainer.

50. In this presentation, Burnett trains agents to call consumers in a geographic area called “Geographic Farming,” calling FSBO’s, expired listings, just listed, and circle prospecting.”

51. Burnett refers to FSBOs as “Fastest Source of Business Opportunity” and to expireds as the “Lowest cost-highest return contact you can make.”

52. In “Just Listed / Just Sold Circle Prospecting” which is referring to drawing a circle around neighbors where an agent in the office just listed or just sold a property and calling each home in the neighborhood to solicit those homeowners to list their property with the agent

calling them. Burnett states “Always have 300 – 500 phone numbers in reserve so you always have a call list” and goes on to recommend dialers such as archagent PowerDialer, Mojo Dialer, and Landvoice as dialer systems to use to call those homeowners (whom they have no consent to call).

53. In “90 Listings in 90 Days” a presentation given at the annual Keller Williams national event, KW MAPS coaches Craig and Annemarie Reger teach a course on lead generation including generating leads from circle prospecting, expireds, and FSBOs. They specifically endorse using the triple line dialer of Mojo. For generating expired listings, they specifically endorse using “RedX and Mojo Power dialer.”

The ONE Thing: Get Listings!

- Expireds
 - Focus on old expireds (2007-2013)
 - Use REDX and Mojo Power dialer

54. In addition, they provide agents with specific scripts to use on these calls tailored to expired or FSBO calls. In addition, they reiterate the use of technology to efficiently make these calls, including Mojo and RedX.


Improve Technology

- Mojo
- REDX
- BOOM headphones
- Additional phone lines and screen/control incoming calls

Keller Williams Promotes Cold Calling Through Its Promotion of KW Team Leads

55. Starting in 2016, Keller Williams featured their own leads they would sell to Keller Williams agents called KW Team Leads, where they would source expired, withdrawn, and FSBOs leads.

56. The KW Team Leads produce Keller Williams promoted directly to agents included a Vulcan7 powerdialer that provides “Auto-dialing and Seller Leads in One.” As part of KW Team Leads “You will receive daily expired, withdraw, and FSBO leads, pushed directly into the platform.”



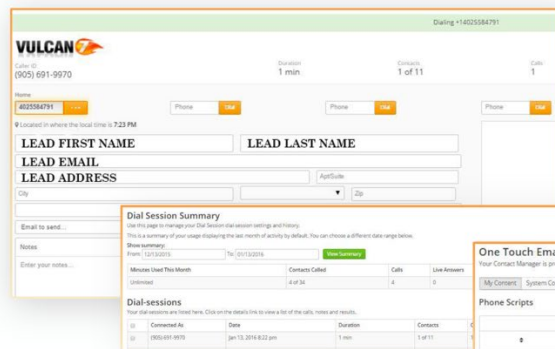
Industry Partnerships & Integrations

Auto-Dialing and Seller Leads in One

Vulcan 7 provides auto-dialing and seller leads in one. You will receive daily expired, withdrawn, and FSBO leads, pushed directly into the platform. BombBomb will humanize your email marketing, helping you build relationships through face to face connections.

Autodialer

POWERED BY

VULCAN 7
Lead ID: (905) 691-9970
Duration: 1 min, Contacts: 1 of 11, Calls: 1

Name: 403554791
Phone: [input] Phone: [input] Phone: [input]

Lead Information:
LEAD FIRST NAME: [input] LEAD LAST NAME: [input]
LEAD EMAIL: [input]
LEAD ADDRESS: [input]
City: [input] Zip: [input]

Email to send: [input]
Notes: [input]
Enter your notes: [input]

Dial Session Summary
This is a summary of your usage displaying the last month of activity by default. You can choose a different date range below.

Phone Scripts: [input]
System Contacts: [input]
All Contacts: [input]

One Touch Emails
Your Contact Manager is preloaded with phone scripts and emails you can use while prospecting. In addition, you may also create your own scripts and emails.

Phone Scripts

Name	Description
1	VoiceMail #1

One-touch Emails

Name	Description
1	No Answer
2	"Left Message"

- Start a dial session with any of your leads directly from the platform

View your detailed Dial Session Summary or go back and finish a session you started

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2016

- Create phone scripts and One Touch email templates

57. Keller Williams first introduced KW Team Leads at the Keller Williams Family Reunion of 2016, and the presentation specifically identified Vulcan7's included products, including the ability to leave pre-recorded voicemails if a consumer doesn't answer a call so the

agent can move on to the next call seamlessly.²⁴

**Keller Williams Promotes Cold Calling
Through Their Approved Vendor Program**

58. Keller Williams also maintains an Approved Vendor program. Keller Williams gives Approved Vendors its “trusted” seal of approval with corresponding “[a]ccess to more than 150,000 Keller Williams associates and more than 750 franchises throughout the United States and Canada.”²⁵ One of Keller Williams’ primary approved vendors is Landvoice, a company that sells agents lists of real estate leads, researches telephone numbers associated with the leads, and provides agents with an online automatic telephone dialing system which allows them to load the lists of leads using a sequential number generator and then dial them.

59. Landvoice’s leads are in the first instance aggregated from expired listings, for-sale-by-owner properties, old expired leads, and pre-foreclosure leads. Landvoice then uses state-of-the-art technology to “take additional steps to deliver the highest quality and quantity of owner contact information including cell phone numbers.”²⁶ Landvoice generates multiple phone numbers (including cell phone numbers and other numbers listed on the DNC) for each lead to ensure that the agent calling has the best chance of reaching the client.²⁷ (This type of lead gathering information has been commonly used by debt collectors for instance who use skip-tracing to track every possible contact related to a particular individual.)

²⁴ <https://www.vulcan7.com/dialer/>

²⁵ See Keller Williams Approved Vendors page, <http://www.kw.com/kw/vendor-network.html>, and see also the YouTube Video at the bottom in which KW agents talk about the trust they have when vendors are considered Approved Vendors (last accessed March 28, 2018).

²⁶ <https://www.linkedin.com/company/landvoice/>

²⁷ Landvoice is owned by Domega, Inc., “the world leader of data aggregation and lead generation [which uses] hi-tech creative systems to give clients hard-to-get data and leads.” See <https://www.linkedin.com/company/domega-inc-/>

60. Landvoice's service includes the automatic loading of the Landvoice-generated leads lists, using a sequential number generator, into a "Power Dialer," an automatic telephone dialing system that "dial[s] leads" at a rate of 80 to 300 per hour and delivers a pre-recorded message if calls are not answered.^{28 29}

Save Time
Contact more leads in less time. By using the Landvoice single-line dialer, you can dial up to 80 calls per hour. Upgrade to the 4-line dialer to call more than 300 leads each hour.

Answer Detection
The Landvoice dialer allows you to quickly move from one call to the next. Instantly leave pre-recorded messages with a simple click. Avoid busy signals, disconnected phone numbers, and unanswered calls.

Stay Organized
Call the right people at the right time with the built-in lead management tools. Access customer history and notes. Keep track of your effectiveness with system analytics and reports.

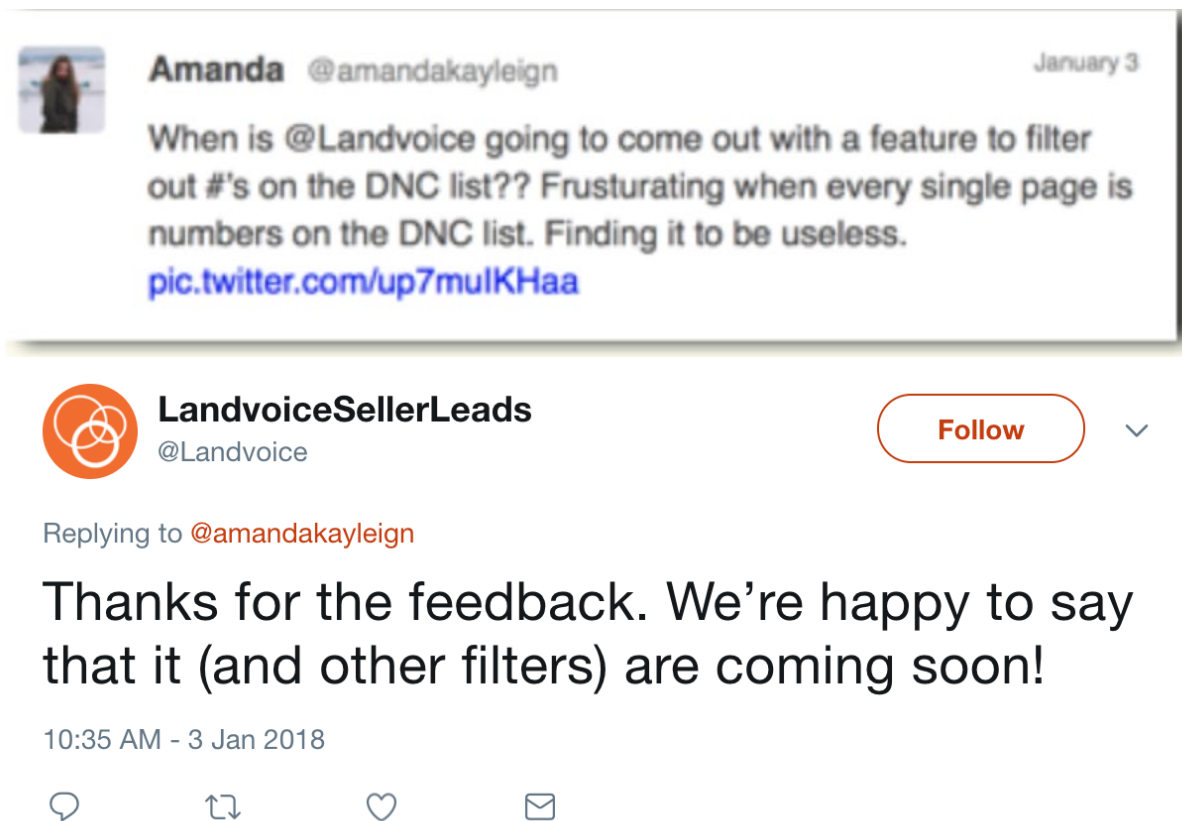
Integrated System
Your new Landvoice expired, FSBO, and pre-foreclosure leads are automatically pushed into the dialer. Have other leads you want to call? Simply import a CSV file.

61. The problem with this whole system is that Landvoice is providing multiple phone

²⁸ Advertisement available at, <https://landvoice.com/power-dialer/>.

²⁹ Landvoice's lists of leads are also intended by Landvoice to be easily integrated and loaded to any autodialer, not just the one provided as part of Landvoice's service. See blog available at, <http://activerain.com/blogsviw/1170875/mojo-and-landvoice--we-play-well-together--->.

numbers (including cell phone numbers and numbers listed on the DNC) along with access to an autodialer system to agents, and neither Landvoice nor the agents have consent to call these consumers' phone numbers using an autodialer and prerecorded voice message in clear violation of the TCPA. In fact, Landvoice has expressly acknowledged in response to an Atlanta Keller Williams' agent's complaints, that the leads it generates include numbers on the DNC and that, as part of its autodialer, it does not provide users a mechanism to filter out numbers on the DNC:^{30, 31}



³⁰ Tweet at, <https://twitter.com/amandakayleign>, and reply at, <https://twitter.com/Landvoice/status/948623975852138496>; *see also* <http://www.kw.com/kw/agent/amanda-kay>.

³¹ Consumers' complaints to Landvoice regarding calls to numbers on the DNC are available at, <https://www.bbb.org/utah/business-reviews/sales-lead-generation/landvoice-data-llc-in-oregon-ut-22168844/reviews-and-complaints?section=complaints>.

62. Notwithstanding, Keller Williams directs its franchisees and their agents to use the Landvoice system, which by definition knowingly promotes their violating the TCPA.³²

63. For example, Keller Williams includes Landvoice as a regular participant in its annual Mega Camp national training event.³³ And, as part of Mega Camp, Keller Williams “team[s] with” Landvoice to promote widespread access to Landvoice’s leads and autodialer system:³⁴

The image shows a promotional banner for Landvoice, a lead generation service. The banner features the Landvoice logo (three interlocking circles) and the text "LANDVOICE". To the right, it says "Call Today 888.678.0905". Below the logo, it states "We are excited to announce ... Landvoice has teamed with Keller Williams" and includes the Keller Williams (KW) logo. A central graphic shows a desktop monitor, a tablet, and a smartphone displaying the Landvoice website, with a callout bubble saying "More cell phone numbers than any other service." Below this, it says "Complete the registration to begin receiving Special KW prices". A row of six icons represents different lead types: Expired, For Sale By Owner (FSBO), Just Listed/Just Sold, Pre-Foreclosure, Old Expired, and Expired Pro. Below the icons, it states: "Landvoice is the premier lead provider for the real estate industry because we find the most accurate phone numbers for your leads. Our state-of-the-art technology enables you to spend your time listing and selling homes instead of researching phone numbers." At the bottom left, it says "Learn more at www.landvoice.com or call 888.678.0905." On the right side of the banner is a vertical sign-up form with an orange header "SIGN UP TODAY". The form includes the text "It's Fast, It's Easy, and Most Importantly, IT'S HALF OFF FOR THE FIRST MONTH!" and fields for "First Name", "Last Name", "Email", and "Phone (xxx) xxx-xxxx". Below the form is a blue button labeled "START NOW". At the bottom of the sign-up area, it says "Follow Us" with icons for Facebook, Twitter, and LinkedIn. Small text at the bottom right of the sign-up area reads: "Landvoice, the best For Sale By Owner (FSBO), Expired and Preforeclosures lead generation service in North America, helps Real Estate Professionals by e-mailing FSBO leads from every source everyday, as well as providing Realtors accurate contact information on expired listings from your MLS."

64. Similarly, Landvoice is a regular participant and presenter regarding its lead

³² In fact, Keller Williams posted a YouTube video inaccurately advising agents that they may call numbers that are on the DNC, explaining: “*If for sale by owner and on the DNC, you may call them anyway.*” Video available at, <https://www.youtube.com/watch?v=UVBfyPfDDjQ>

³³ See video of Landvoice at Megacamp at, <https://www.youtube.com/watch?v=ICHXd07b8tc> (last accessed March 28, 2016).

³⁴ The deal is available at, <https://www.landvoicedata.com/kw/> (last accessed March 28, 2016).

generating and autodialing services at Keller Williams Family Reunion, a yearly event with over 10,000 attendees, which features Keller Williams executives and master faculty leading educational sessions covering sales skills, leadership skills, and technology training.^{35, 36, 37, 38}

65. In addition to endorsing Landvoice's presentation at Family Reunion, Keller Williams' own trainers from Keller Williams University – which “provides an industry-leading curriculum addressing every aspect of success in real estate”³⁹ – direct Keller Williams agents at Family Reunion, and as part of other Keller Williams University training programs, to purchase lead lists and call them using an autodialer:

Just Listed / Just Sold Circle Prospecting

- Always have 300 – 500 phone numbers in reserve so you always have a call list.
- Use a dialer:
 - archagent PowerDialer
 - Mojo Dialer
 - Landvoice

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³⁵ <https://trainingmag.com/trgmag-article/keller-williams-home-no-1>

³⁶ Instagram post with the caption “...#Landvoice at #KWFR2018” [KWFR is Keller Williams Family Reunion] available at, <https://www.instagram.com/p/BfcEDa9HwWD/>, and photo of the Landvoice table available at, <https://i.pinimg.com/736x/e6/85/6f/e6856f4daa3bd8984a089588fdf381b7--family-reunions-orlando-florida.jpg>.

³⁷ <https://trainingmag.com/trgmag-article/keller-williams-home-no-1>




³⁸ Instagram post with the caption “...#Landvoice at #KWFR2018” [KWFR is Keller Williams Family Reunion] available at, <https://www.instagram.com/p/BfcEDa9HwWD/>, and photo of the Landvoice table available at, <https://i.pinimg.com/736x/e6/85/6f/e6856f4daa3bd8984a089588fdf381b7--family-reunions-orlando-florida.jpg>.


³⁹ As stated on the KW Education webpage, <http://www.kw.com/kw/education.html>.

66. Other Keller Williams programs and materials similarly direct agents to use an autodialer to call leads. For example, Keller Williams' training manual for agents called Three L Blueprints, which Landvoice publishes on its website, makes clear to agents that using an autodialer is required to become the "highest-performing associate[]." ⁴⁰

67. In fact, Keller Williams' marketing plan – involving purchasing lists of leads and autodialing and calling them with a prerecorded voice message – is reinforced at the highest levels of Keller Williams' organization. Dianna Kokoszka, CEO of KW MAPS Coaching at Keller Williams, who co-teaches training classes with Keller Williams founder Gary Keller, developed an entire training program called BOLD (Business Objective: A Life by Design) centered around obtaining Landvoice generated leads and autodialing them, which Keller Williams claims "has helped **tens of thousands**" of its agents. In fact, Keller Williams agents who sign up for BOLD are given a free trial account with Landvoice: ⁴¹

What's Included for Free:

 <p>Expired Limited</p> <p>Your trial provides the highest quality and quantity of home phone numbers for all Expired leads. Because your leads are ready at 8AM every morning, you can be the first agent on the phone contacting Expired leads. Read more about Expired limited below.</p>	 <p>FSBOs (2 counties)</p> <p>Top producing agents know that most FSBOs eventually list with an agent. We meticulously scour over 1,700 sources of FSBOs every day to make sure you have the highest quality and quantity of leads possible.</p>	 <p>Neighborhood Search</p> <p>Neighborhood Search is an easy and powerful way to become the expert in your geographic area. Quickly access a list of homeowner's contact information in any neighborhood. Use it for just listed/sold properties, direct mail, and geo farming.</p>
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⁴⁰ Full training manual available here, https://landvoice.com/wp-content/uploads/2017/05/KW_Three_L_Blueprints.pdf.

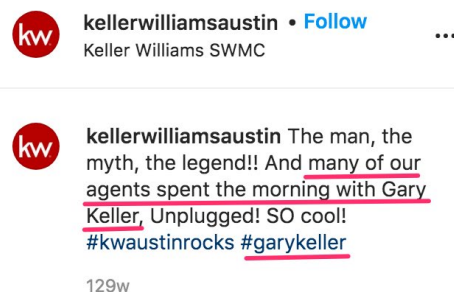
⁴¹ <https://landvoice.com/bold/welcome/>

68. Keller Williams coaching and training programs and materials are an integral part of the Keller Williams franchise system, and are the means by which Keller Williams controls the manner in which agents market for new listings – i.e., buying lists of leads and autodialing and calling the associated telephone numbers with a prerecorded voice message without consent.

**KW Austin SW Further Promotes Keller Williams’
Cold Calling Based Marketing Plan for their Agents**

69. KW Austin SW is the first Keller Williams office that founder/CEO Gary Keller opened, the largest real estate office in North America, and Keller Williams’ most productive market center.⁴²

71. Keller Williams’ CEO Gary Keller maintains a close connection with KW Austin SW itself, regularly coming to speak at its main office. For example:



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⁴² https://www.facebook.com/pg/KellerWilliamsAustinSWMC/about/?ref=page_internal

⁴³ <https://www.instagram.com/p/BelyGbdgw18/>



Melanie Owen Kennemann is 😊 feeling excited with Anne Rosenberg and 17 others at Keller Williams Realty International.
November 9, 2018 · Austin, TX · 🌐

No matter how many times or hours I am privileged to learn from Gary Keller educating us on our industry, I am smarter because of it!!! Kw agents can tune in on kw connect and watch the live stream with us NOW! Part two is about to start so login to kw connect and see the latest in TECH!!!! I loved his opening quote about managers vs. leaders. The manager goes through the forest with the people, and the leader climbs the tree and says "wrong forest"!!! #teamGARY #gamechanger #kwaustinrocks



72. KW Austin SW is currently led by team leaders Dianne Johnson and Melanie Kennemann.⁴⁵

73. Diane Johnson operating principal of KW Austin SW says: "There are a lot of agents that get into the business, and they have to do two things really well: one is lead generate – and we hear that every single day around here – the second one is mastering scripts."⁴⁶

74. Melanie Kenneman, the other KW Austin SW team leader, in the same speech, acknowledges that lead generation is the key to a sustaining real estate agent business model and she openly endorses cold calling stating: "The lead-gen, it just has to be what you do...how many people did you talk to today... and finding your niche. My lead gen is not going to be the same as someone else's like cold calling because I'm a people person...other people FSBO for-sale-by-owners, so find that niche for you and master that."

⁴⁴ <https://www.facebook.com/melanie.kennemann>

⁴⁵ <http://kwaustinswmc.mcsites.bullsaisystems.com/our-leadership-team/>

⁴⁶ <https://www.youtube.com/watch?v=-udmXfgWRGg>

75. Kennemann posted a video on YouTube⁴⁷ and Facebook – Do you prospect 75 hours a WEEK??:



76. In this video, Kennemann speaks with Gary Gentry (the first Keller Williams agent that Keller Williams' CEO Gary Keller hired, who is still a very successful agent working for KW Austin SW over 30 years later) and Tomas Corzo, a successful KW Austin SW broker/realtor.

77. Gentry explains during the interview that he would prospect for 75 hours every week before becoming a real estate agent and it was this experience that prepared him for success with Keller Williams. (In 2019, Gentry ranked within the top 5% of all real estate agents in Austin, Texas.⁴⁹)

⁴⁷ https://www.youtube.com/watch?v=HyS9MP_4evo

⁴⁸ <https://www.facebook.com/melanie.kennemann>

⁴⁹ https://www.facebook.com/pg/KellerWilliamsAustinSWMC/posts/?ref=page_internal

78. In response, Kennemann answers, “Sounds pretty BOLD to me. You know, I just, I want to bring up that point because 75 hours a week of lead gen, and, and many agents struggle with 1 hour a day, 5 hours a week or 10 hours a week, or, my gosh, imagine if you followed the MREA [reference to Million Real Estate Agent book written by Keller Williams’ founder and CEO Gary Keller] and you did 3 hours a day which is 15 hours a week of lead generation, which leads to everything else...”

79. Kennemann is referencing how Gentry’s daily prospecting calls are in line with Kennemann’s endorsement of KW BOLD, a multi-week training program produced by Keller Williams which KW Austin SW incentivizes its agents to take. KW BOLD is a program that trains agents to make daily prospecting, cold calls to generate leads.

80. KW Austin SW also specifically trains its agents based on the courses and training provided by Defendant Keller Williams, including direction and training from Keller Williams’ co-founder Gary Keller.

81. KW Austin SW’s training includes Keller Williams’ BOLD program, which provides instruction and training on who to call, how to call them, and what to say.

82. As explained above, KW BOLD instructs agents to cold call consumers who have never given the agent consent to call them such as consumers with expired listings (who have no relationship with Keller Williams) or for-sale-by-owner consumers who have not invited solicitation calls from Keller Williams agents to solicit them to list their property with them.

83. Keller William’s BOLD’s course entails step-by-step training on cold calling expireds and FSBOs, including training them on scripts to use during the calls.

DURING BOLD YOU WILL:

- Overcome your limiting beliefs
- Set BOLD goals
- Learn how to deliver powerful scripts that naturally influence people to work with you
- Incorporate time-saving strategies and techniques that will take your business to the highest levels
- Build an abundance of leads into your business
- Make calls, set appointments and close contracts

Please direct your questions about this event to us at BOLD@kw.com.

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84. KW Austin SW promotes its agents to take BOLD so much that they incentivize their agents to take the program in return for company giveaways promoted by their team leaders.

85. KW Austin SW also endorses their most successful teams and agents who generate their listings through cold calling. For instance, KW Austin SW team leader Melanie Kenneman knows about and ratifies the cold calling of her leading team, Tim Heyl's team, despite Heyl openly admitting that his team generates their leads through cold calling consumers.

86. When Melanie Kennemann interviewed Tim Heyl she stated "It's Melanie Kennemann team leader at Austin SW and OP at Austin NW and I am so excited that my dear friend and number one agent Tim Heyl, I know everyone has heard of you, because last year Inman's innovator of the year award, Tim Heyl will tell us what he is doing with all of the companies he has....you are number one team in our office for GCI."⁵¹

87. Tim Heyl, who runs the number one team within KW Austin SW (and is one of the top 5 real estate producers within Keller Williams as a whole), for gross commission income is an outspoken proponent of generating his listings through cold calling.

88. As Heyl goes on to state "Then I realized that phones can bring consistency to our

⁵⁰ *Id.*

⁵¹ <https://www.youtube.com/watch?v=7w8J9DMJjCo&t=1772s>

business.”

89. Tim Heyl even created a side business called “Phone Animal” where other Keller Williams agents can purchase a phone animal subscription from Tim Heyl’s “prospectors” to work as an inside sale agent for that particular Keller Williams company.⁵²

90. Heyl states in another video “This is where the name came for our business ‘phone animal’ – we’ve always said you have to be looking for a phone animal - someone who is willing to attack the phones day in and day out. This is their role. This is a very focused and specific role. This is someone that puts the headset on and clicks play and for the next six hours they are just cranking it out attacking the phones. This is why you need to be looking for a phone animal.”⁵³

91. “We start them out [new phone animals] with a big list - lowest quality – that’s neighborhoods – circle prospecting; then we take them over step-by-step until they are able to call to old expireds, old for sale by owners. Then we let them call recent expireds and recent for sale by owners. Eventually they are calling today’s expireds and today’s for sale by owners.”⁵⁴

92. “We monitor how many contacts they make per dial, how many hours they are on the phone per day, how many nurtures per conversation...we have scoreboards in the office that show rankings.”⁵⁵ Heyl goes on to explain how he has set it up so that other agents can hire his “phone animals” to make prospecting calls on their behalf. Heyl explains that he has six people in his office “they [the phone animals] are making anywhere from **800-1,000 calls a day** and the only way you can do that is on an autodialer.”

⁵²

<https://www.facebook.com/PhoneAnimal/videos/1546059619029575/?v=1546059619029575>

⁵³ <https://www.youtube.com/watch?v=NCIDiyilc6w>

⁵⁴ <https://www.youtube.com/watch?v=NCIDiyilc6w>

⁵⁵ <https://www.youtube.com/watch?v=NCIDiyilc6w>

93. When Tim Heyl describes others using autodialers in his area he says “I know here in Austin, Texas, I can’t even begin to describe the amount of people that are on autodialer calling expireds and for sale by owners, it is astronomical.”

94. Heyl goes on to describe where he gets the phone numbers to give to his phone animals “There a number of ways: one place is Cole directory we have subscription to Cole directory...we’ve been a part of Vulcan7 for quite some time.”⁵⁶

95. He goes onto explain more about autodialing “We thought Mojo was the only thing out there at that time, we found two other triple dialers, one that even does five at a time, one of them is cheaper than Mojo and one is the same as Mojo...the one we are moving to is Five9 and the other one is USADialer.”

96. “Phone Animal...it’s the exact same thing, in fact the Heyl group is essentially the biggest client of Phone Animal, it was a department within the Heyl Group and now we’ve just extended it, that same thing, to other real estate teams.” “You will pick your zip codes...we’re going to have our ISAs and generate their nurtures, and deliver them to you.”^{57 58}

97. Tim Heyl even created a systems based Keller Williams course called “Tim Heyl’s Real Estate Machine” where he taught Keller Williams agents how to grow a systems-based team like he has.⁵⁹

⁵⁶ <https://www.youtube.com/watch?v=NCIDiyilc6w>

⁵⁷ <https://www.youtube.com/watch?v=NCIDiyilc6w>

⁵⁸ In 2017, Tim Heyl created a platform on Keller Williams that integrated a dialer, Salesforce, and a trello task manager to monitor and make the prospectors more efficient. <https://www.toptal.com/designers/resume/bryce-thompson> and <https://dribbble.com/shots/6679181-Keller-Williams-Phone-Dialer-UI> and https://thompsonux.com/wp-content/uploads/2019/06/03-23-2017-High-Level-Wireframes.min_.pdf

⁵⁹ <https://reach150.com/m/review/69340/tim-heyls-real-estate-machine-tim-heyl-austin-tx-real-estate> and <https://www.youtube.com/channel/UCeYCPcfvAJGULpad96VRLw/videos> and

98. Tim Heyl explains that “On our real estate team we have multiple departments that are focused on generating leads for the real estate agent on a regular basis. We have a call center that are cold calling neighborhoods day in and day out, doing the grunt work, that the agent doesn’t want to do and doesn’t necessarily doesn’t have the time to do...but not cold calling a seller who might want to sell their home 12 months from now.”⁶⁰

99. From the fact that Tim Heyl is the biggest producing team within KW Austin SW and open about how he generates his listings, it is clear that Defendant Keller Williams, at a minimum, knows about and ratifies his team’s and other agents’ cold calling practices.

**KW Troy Market Center Further Promotes Keller Williams’
Cold Calling Based Marketing Plan for their Agents**

100. Defendant KW Troy Market Center “prides itself on being a training and consulting company, cleverly disguised as a real estate company. No other company has systems, models, tools, training and support that are designed to assist [real estate] agents at all levels.”⁶¹

101. These lead generation systems and training provided to its real estate agents are provided directly by Defendant Keller Williams.

102. In Defendant KW Troy Market Center’s own words “Keller Williams has created the model for what it takes to succeed in real estate and reinforces its winning models through training, coaching, educational events and a best-selling series of publications. Troy MI Keller Williams Real Estate [Keller Williams Troy Market Center] training brings these models and systems to life.”⁶²

<https://www.youtube.com/watch?v=QRBWgdzVZPk>
<https://www.youtube.com/watch?v=x9ftVAWZrQw>

and

⁶⁰ <https://www.youtube.com/watch?v=peYSCCmwqRU>

⁶¹ <https://yourcbl.com/the-keller-williams-history-as-told-by-gary-keller/>

⁶² <https://yourcbl.com/the-keller-williams-history-as-told-by-gary-keller/>

103. Keller Williams Troy Market Center specifies that it provides online training via Defendant Keller Williams' KWConnect along with Keller Williams University, MAPS Coaching and the following specific Keller Williams programs: Ignite, 36-12-3, Seller Mastery, MREA (Millionaire Real Estate Agent), and BOLD.

104. Each of the above courses and training are directly provided by Defendant Keller Williams and train the agents to generate leads based on cold calling.

105. Ignite! is a Keller Williams University course and training program provided to all Keller Williams agents. In this Ignite course, Defendant Keller Williams teaches its agents that "calling for leads is the single most important step in building your business... Why can some agents make 100 calls a day and others fear the phone?"

106. "Lead Generation 36:12:3" is a course provided by Keller Williams directly to its agents.

107. In this course, the instructors who give this class to Keller Williams agents are instructed "Practicing scripts and calling FSBOs or Expired Listings is the most important part of the class so make sure you don't compromise on time allocated for those activities. Prepare in advance by making sure there is a telephone for making calls during the Power Session. Bring phone numbers for current FSBO and Expired Listings... Note: if possible, consider teaching this session in 2 ½ or 3 hours." The exercises in this training include "Role-Play FSBO Scripts, Role-Play Expired Scripts, Make Calls to FSBO and/or Expired Listings, The 3 Hour Habit."

**KW M77 Further Promotes Keller Williams'
Cold Calling Based Marketing Plan for their Agents**

108. KW M77 owns and operates two Keller Williams brokerages: Keller Williams Paint Creek and Keller Williams Somerset.

109. KW M77 provides its agents with training courses and classes based on the direction and training provided by Keller Williams.

110. KW M77 provides its agents with a paid 90-day Associate Agent training program.⁶³

111. Agents are taught skills, habits and techniques that KW M77 claims will make them moguls in the industry, and KW M77 provides agents further, continuous direction after the initial training is completed:

Real Estate Mogul - Paid Training

The Delia Group w/ Keller Williams Rochester, MI

- Whether you are an experienced Real Estate Agent or a New Agent planning on getting their license, The Delia Group with Keller Williams has an opportunity for you!
- 90-day Associate Agent training program allows you to get into Real Estate without the first months of no paycheck (nobody wants to eat Ramen every night for dinner).
- While in training you will learn the skills, habits and techniques needed to truly become a mogul in the industry.
- Not to mention the support you will receive as an agent after you complete training!
- Rated top 5 Real Estate teams in the State of Michigan Ranked Top 1% of Realtors Nationally Assisted 412 families in 2017.

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112. KW M77 provides agents access to autodialers, such as the Storm dialer (which is provided through RedX), which enable agents to “contact up to 4x more sellers over dialing by hand when using Storm Dialer to prospect.”⁶⁵

113. The Storm dialer also features the ability to make prerecorded voice calls like the ones Plaintiffs received.⁶⁶

⁶³ <https://jobsearcher.com/j/real-estate-mogul-paid-training-at-the-delia-group-w-keller-williams-in-rochester-mi-QR2d69>

⁶⁴ *Id.*

⁶⁵ <https://www.theredx.com/products/storm-dialer/>

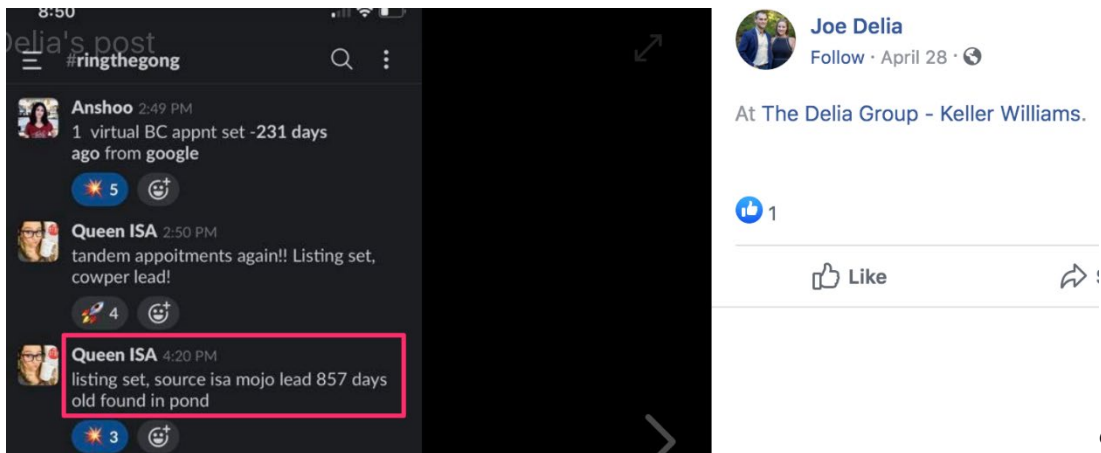
⁶⁶ Storm also features whereby an agent can “leave voicemails you can pre-record when a voicemail picks up.” TheRedx.com

114. KW M77 also provides agents with access to Vulcan7, a prospecting tool where agents can purchase lead lists from Vulcan7 (whom they have no consent to call) and can call those lead lists through Vulcan7's power dialer.

115. Like the Storm dialer the Vulcan7 dialer allow agents to make calls using a prerecorded voice.

116. KW M77 also endorses use of services from Mojo, which like Vulcan7 provides both leads and a dialer agents can use to make prerecorded voice calls.

117. In fact, Joseph Delia, Operating Principal and Founder of the KW M77⁶⁷ posted a screenshot which touting an agent's acquisition of a listing using Mojo's products:



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118. Joseph Delia admits that he uses “Mojo for everything.”⁶⁹

119. Joseph Delia also admits that he uses “Just-listed” and “just sold” cold calling methods to generate new listings.⁷⁰ This is a process where an agent purchases a list of phone

⁶⁷ <https://www.linkedin.com/in/thedeliagroup/>

⁶⁸

<https://www.facebook.com/photo.php?fbid=10108814648076608&set=pcb.10108814674149358&type=3&theater>

⁶⁹ <https://www.youtube.com/watch?v=StjrkpF5kEg>

⁷⁰ <https://www.youtube.com/watch?v=StjrkpF5kEg>

numbers in a geographic area surrounding a property the agent “just listed” or “just sold” and attempts to cold call other homeowners in that area to inform them of their listing or sale, as a lead generation tactic and conversation starter to generate more listings.

120. As recently as April 1, 2020 Chris Hollis, the Director of lead generation and technology at the KW M77 led a video training for the KW M77 agents on lead generation.

121. In that training he trained the agents on using Vulcan7 including: how to setup the dialer, how to get the dialer to go faster, how to make sure the scripts show up when calling leads, how to import lists in Vulcan7, how to call phone numbers associated with expired listings, circle prospecting and for-sale-by-owners.⁷¹ In the video training, he actually sets up an agent’s profile so that agent will have their dialer set up for them.

122. Hollis goes on to explain: “Quick thing on Vulcan7, Vulcan7 is a data provider that has a dialer built-in...their data is the industry’s best...a lot of people that have Mojo [the Mojo dialer] [they] buy Vulcan7 for the data. Vulcan7’s power dialer is great, but it is not the best dialer out there, but their data is the best. They pull data from for-sale-by-owners, expireds...”⁷²

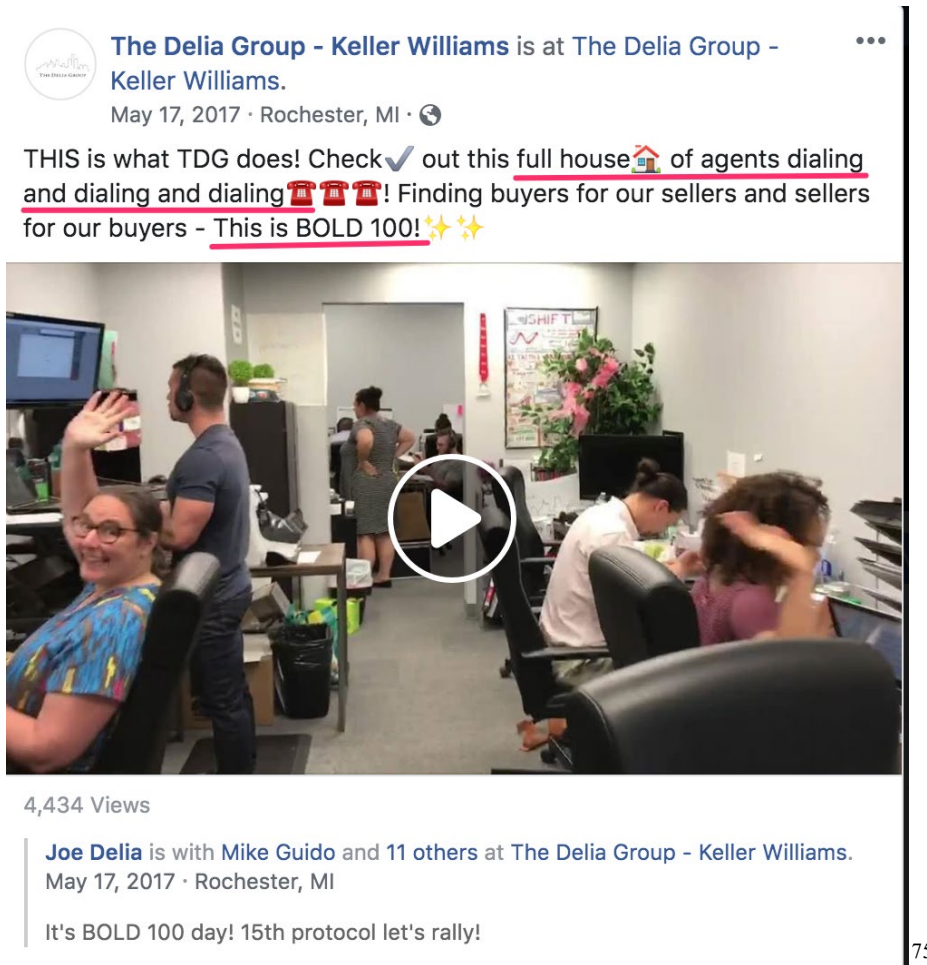
123. Hollis goes to state that he has pre-setup a lot of the dialer functions for the KW M77 agents already.

124. Chris Hollis used to train agents on the KW Team Leads system. The KW Team Leads was a system provided by Defendant Keller Williams, where they would provide agents

⁷¹ <https://www.youtube.com/watch?v=P4BvwmWpcxE>

⁷² *Id.*

for a fee leads and the Vulcan7 dialer and the Storm dialer to call those leads, which also featured the ability to send them pre-recorded messages.^{73 74}



126. The aforementioned picture references “BOLD,” which, as explained above, is a course offered by Keller Williams that provides instruction and training to Keller Williams agents

⁷³<http://kw-sites.s3-us-west-2.amazonaws.com/kw-images-prod/s3fs-public/Introducing%20KW%20TeamLeads.pdf>

⁷⁴ <https://www.vulcan7.com/dialer/>

⁷⁵ https://www.facebook.com/pg/realdeliagroup/posts/?ref=page_internal

on how to place cold calls to consumers by calling consumers who placed their properties for sale without an agent, also known as for sale by owner (“FSBO”) listings, and by calling consumers with expired property listings, i.e., consumers that have previously listed properties with other brokerages and whose properties did not sell – consumers that agents have no prior relationship with and do not have consent to call.

PLAINTIFF WRIGHT’S ALLEGATIONS

127. Plaintiff Wright is the subscriber of two cellular telephone numbers that he registered on the DNC on January 22, 2016 to prevent unsolicited marketing calls.

128. The two telephone numbers are primarily for residential use.

129. In 2017, Plaintiff Wright, through a Re/Max real estate agency, listed for sale an apartment he owns in Orlando, Florida. The official multiple listing service listing for the property provided the Re/Max agent’s telephone number as a contact number, and did not list any of Wright’s telephone numbers. In late 2017, at Wright’s request, Re/Max removed Wright’s listing from the market.

130. As soon as the listing was removed, Plaintiff Wright began receiving unsolicited autodialed calls on his two cellular phone numbers. Not surprisingly, this is one of the advertised features of Landvoice and other similar leads services: to immediately identify and allow agents to call phone numbers related to “expired” listings – regardless of whether the consumer has advertised his phone number (which Wright did not do), or given consent to being contacted (which Wright also did not do).

131. In total, between January 1, 2018 and January 15, 2018, Plaintiff Wright received at least 20 calls to his two cellular telephone numbers from agents at least 4 different Keller Williams franchises, including Keller Williams Classic, Keller Williams Advantage,

Keller Williams Classic II, and Keller Williams Park. As is clear from the conduct of the Keller Williams affiliated agents at each of these Keller Williams franchise locations that called Plaintiff Wright to solicit his listing, these Keller Williams franchise locations promote Keller Williams cold calling based marketing plan for their agents.

132. The following chart provides a breakdown of the calls by cellular telephone number, Keller Williams franchise, calling phone number, date, and time:

Plaintiff Wright's First Cell Phone Number

Keller Williams Classic:

- January 1, 2018 using phone number 407-353-7706 at 10:04 AM
- January 15, 2018 using phone number 407-445-7088 at 9:20 AM

Keller Williams Advantage:

- January 1, 2018 using phone number 407-535-1300 at 5:22 PM

Keller Williams Classic II:

- January 3, 2018 using phone number 407-476-3660 at 10:34 AM

Unknown Keller Williams:

- January 1, 2018 using phone number 407-476-1651 at 8:20 AM
- January 2, 2018 using phone number 407-476-1651 at 7:18 PM

Plaintiff Wright's Second Cell Phone Number

Keller Williams Classic:

- January 1, 2018 using phone number 407-353-7706 at 7:08 AM
- January 1, 2018 using phone number 407-292-5400 at 8:40 AM

Keller Williams Advantage:

- January 1, 2018 using phone number 321-296-9641 at 7:25 AM
- January 2, 2018 using phone number 407-535-1300 at 9:33 AM
- January 9, 2018 using phone number 407-207-0825 at 5:56 AM
- January 10, 2018 using phone number 407-207-0825 at 6:48 AM
- January 10, 2018 using phone number 407-207-0825 at 9:09 AM

Keller Williams Classic II:

- January 3, 2018 using phone number 407-476-3660 at 7:34 AM

Keller Williams Parks:

- January 15, 2018 using phone number 407-865-0427 at 10:37 AM

Unknown Keller Williams:

- January 1, 2018 using phone number 407-476-1651 at 5:20 AM
- January 1, 2018 using phone number 407-476-1651 at 9:27 AM
- January 10, 2018 using phone number 352-631-7985 at 7:24 AM
- January 10, 2018 using phone number 352-631-7985 at 8:00 AM
- January 10, 2018 using phone number 352-631-7985 at 8:02 AM

133. These calls to Plaintiff Wright were solicitations by Keller Williams' agents.

They were marketing their real estate services using Keller Williams' name, systems, and marketing plan in an effort to obtain the listing for Wright's Orlando property. When Wright asked the agents how they got his contact information, he was told on multiple occasions that his phone numbers were provided by Landvoice because they were associated with an expired listing. He was also told that the calls were being made to him from Landvoice's list of leads using a dialer on which the leads were loaded. Among other agents, this was expressly stated to Wright by Dustin Berger from Keller Williams Parks on January 15, 2018, during a call that began with a noticeable pause.

134. Prior to that, on January 1, 2018, Plaintiff Wright received a prerecorded voice message from phone number 321-296-9641. The call came in at 7:25 AM from a Keller Williams Advantage agent who asked Wright to call him back at phone number 407-270-2168.

135. After initiating litigation against Keller Williams, Keller Williams' agents stopped calling Plaintiff Wright for a few months, until Sunday July 1, 2018, when Plaintiff Wright began receiving additional calls from Keller Williams agents.

136. The following chart provides a breakdown of the second wave of calls by cellular telephone number, Keller Williams franchise, calling phone number, date, and time:

Plaintiff Wright's First Cell Phone Number

Keller Williams Advantage:

- July 1, 2018 using phone number 352-509-0079 at 5:03 AM
- July 1, 2018 using phone number 321-239-3202 at 7:25 AM
- July 2, 2018 using phone number 321-405-2444 at 6:10 AM
- July 2, 2018 using phone number 407-476-7292 at 6:32 AM
- July 7, 2018 using phone number 407-371-8111 at 9:25 AM
- July 7, 2018 using phone number 321-405-2444 at 9:38 AM
- July 14, 2018 using phone number 407-573-2322
- July 17, 2018 using phone number 321-926-9371 at 2:11 PM

Plaintiff Wright's Second Cell Phone Number

Keller Williams Advantage:

- July 1, 2018 using phone number 407-900-6801 at 8:17 AM
- July 2, 2018 using phone number 321-405-2444 at 9:16 AM
- July 2, 2018 using phone number 407-990-6686 at 10:46 AM
- July 2, 2018 using phone number 407-573-2322
- July 12, 2018 using phone number 407-573-2322
- July 16, 2018 using phone number 407-573-2322
- July 17, 2018 using phone number 407-573-2322 at 10:09 AM

Unknown Keller Williams:

- July 2, 2018 using phone number 407-573-2322 at 8:20 AM
- July 2, 2018 using phone number 407-573-2322 at 11:46 AM
- July 7, 2018 using phone number 407-476-8954 at 7:15 AM

137. On July 1, 2018 at 7:25 AM, the Keller Williams agent that called Plaintiff Wright's cellular phone number using 321-239-3202 left a prerecorded voice message. The message introduces the agent as being Cesar, offering to sell Wright's property that had been taken off the market.

138. Plaintiff Wright called Cesar back at phone number 321-239-3202 on July 1, 2018 at 10:41 AM. Wright began the call by confirming Cesar's name and which agency he works at, which Cesar confirmed was Keller Williams, and then demanded that the calls stop.⁷⁶

139. Despite the request for all calls to stop, the same prerecorded voice calls were

⁷⁶ <https://www.homelight.com/agents/cesar-estrada-fl-03196151>

made to Plaintiff Wright on July 2, 2018 at 6:32 AM and at 10:46 AM.

140. On July 9, 2018 at 7:15 am, Plaintiff Wright received a call from a Keller Williams agent using phone number 407-476-8954. After the agent introduced himself as being with Keller Williams Realty, he told Wright which property he was inquiring about. In return, Plaintiff Wright asked the agent how he got Wright's phone number. The agent answered that he uses a system that locates phone numbers. The agent specifically indicated that he uses Vulcan7. Plaintiff Wright then demanded that the agent remove his number from their system and never call again.

141. Discovery in this action has also revealed that, at a minimum, both of Plaintiff's Wright's telephone numbers were called multiple times by Keller Williams agents using both the Mojo and Vulcan7 dialers, including at least two calls using the Vulcan7 dialer to each of his numbers resulting in the transmission of prerecorded voice messages.

142. Notwithstanding, Plaintiff Wright has never provided his cellular phone numbers to Keller Williams, or otherwise consented to any Keller Williams agent placing solicitation telephone calls to either of his phone numbers registered on the DNC.

PLAINTIFF VALDES'S ALLEGATIONS

143. Plaintiff Valdes registered his cellular phone on the DNC on February 8, 2010 in order to prevent unsolicited marketing calls.

144. The telephone number is primarily for residential use.

145. In early 2018, Plaintiff Valdes had a property listed for sale. After he took down the listing and the agreement with his real estate agent ended on October 29, 2018, Valdes began receiving calls from realtors affiliated with various Keller Williams franchises, including Keller Williams Anaheim Hills Yorba Linda, Keller Williams Vida Group Realty, Keller Williams

Realty Pacific Estates, Keller Williams Mission Viejo, and Keller Williams Realty Irvine. As is clear from the conduct of the Keller Williams affiliated agents at each of these Keller Williams franchise locations that called Plaintiff Valdes to solicit his listing, these Keller Williams franchise locations promote Keller Williams cold calling based marketing plan for their agents.

146. The following chart provides a breakdown of the calls to Valdes by Keller Williams franchise, calling phone number, date, and time:

Plaintiff Valdes's Cell Phone

Keller Williams Anaheim Hills Yorba Linda:

- October 29, 2018 at 10:18 AM using phone number 714-351-6780

Keller Williams Vida Group Realty:

- October 29, 2018 at 11:08 AM using phone number 213-842-3363
- October 29, 2018 at 11:09 AM using phone number 213-842-3363

Keller Williams Realty Pacific Estates:

- October 29, 2018 at 1:57 PM using phone number 562-824-6227

Keller Williams Mission Viejo:

- November 1, 2018 at 9:25 AM using phone number 949-735-6392

Keller Williams Realty Irvine:

- November 13, 2018 at 3:34 PM using phone number 949-885-6157

147. These calls to Plaintiff Valdes were solicitations by Keller Williams' agents. They were marketing their real estate services in an effort to obtain the listing for Valdes' property.

148. Plaintiff Valdes never directly or indirectly consented to receiving solicitation calls from any Keller Williams agents.

149. Similar to Plaintiff Wright, the calls from Keller Williams' agents continued even

after he initiated litigation against Keller Williams.

150. On April 26, 2019, Plaintiff Valdes received a call from Keller Williams realtor Sergio using phone number 562-449-9884.⁷⁷

151. On May 16, 2019, Plaintiff Valdes received a call from Keller Williams realtor Phillip using phone number 661-670-7163.

152. On June 17, 2019, Plaintiff Valdes received a call from Keller Williams realtor Matt using phone number 310-683-9144.⁷⁸

153. On July 9, 2019, Plaintiff Valdes received a call from Keller Williams realtor Chris using phone number 949-492-7653.⁷⁹

154. Each of those calls after the initiation of litigation was for the purpose of soliciting Plaintiff Valdes to list his property with Keller Williams.

155. Discovery in this action has also revealed that, at a minimum, Plaintiff Valdes' telephone number was provided by both Vulcan7 and Mojo as a lead for Keller Williams agents to call, and that Keller Williams agents called those leads using both the Vulcan7 and Mojo dialers, including at least four calls using the Vulcan7 dialer resulting in the transmission of prerecorded voice messages.

PLAINTIFF ASHER'S ALLEGATIONS

156. On July 15, 2020, Plaintiff Asher received a pre-recorded voicemail on his cell phone from an Austin SW agent using phone number 512-248-0840 instructing him to call Patrick McGinley if he was interested in selling his home.

⁷⁷ <https://www.realestatebook.com/agent/423403/sergio-orzynski>

⁷⁸ <https://www.hoffmanmurphy.com/agent/matt-gavlick/>

⁷⁹ <https://www.realestatebook.com/office/76769/keller-williams-oc-coastal-realty>

157. Phone number 512-248-0840 is listed as the main phone number for Keller Williams McGinley Group on the McGinley Group Keller Williams website.

158. Patrick and Catherine McGinley are both listed as KW Austin SW agents on the KW Austin SW website.⁸⁰

159. McGinley Group has also been recognized for its sales success on the KW Austin SW Facebook page:

160. In response to the unsolicited, pre-recorded phone call that he received, Plaintiff Asher called 512-248-0840 and told the agent that he spoke to that his phone number is registered on the National Do Not Call registry, and demanded that the calls stop.

161. Plaintiff Asher never directly or indirectly consented to receiving solicitation calls from any of the Defendants or the Keller Williams agent that called him.

PLAINTIFF SAMATARO'S ALLEGATIONS

162. Plaintiff Samataro registered his cell phone number on the DNC on June 30, 2006.

163. Plaintiff Samataro's cell phone is primarily for residential use.

164. On June 27, 2017 at 3:33 PM, Plaintiff Samataro received a call to his cell phone from a KW Troy Market Center agent, Nick Zeoli, using the phone number 248-860-3268.

165. Zeoli was calling to offer real estate brokerage services to Plaintiff Samataro.

166. Zeoli called again on June 27, 2017 at 8:33 PM using phone number 248-860-3268. Again, the purpose of the call was to offer real estate brokerage services to Plaintiff Samataro.

⁸⁰ <https://austinsouthwest.yourkwoffice.com/our-associates>

167. On June 28, 2017 at 2:16 PM, Plaintiff Samataro received a prerecorded call to his cell phone from the KW Troy Market Center agent, Nick Zeoli, using the phone number 248-860-3268.

168. Plaintiff Samataro never directly or indirectly consented to receiving solicitation calls from any of the Defendants or the Keller Williams agent that called him.

169. Plaintiff Samataro was not looking to sell his home and was not otherwise seeking real estate brokerage services.

PLAINTIFF MISKOKOMON'S ALLEGATIONS

170. Plaintiff Miskokomon registered his cell phone number on the DNC on June 1, 2011.

171. Plaintiff Miskokomon's cell phone is primarily for residential use.

172. On September 25, 2018 at 8:11 AM, Plaintiff Miskokomon received a call to his cellular phone number from Nick Zeoli from the phone number 248-860-3268.

173. At the time of the call to Miskokomon, Nick Zeoli was an agent for the KW M77, a Keller Williams franchise. Previously, Nick Zeoli worked as an agent for Keller Williams Troy Market Center.

174. According to WhitePages Premium, Zeoli is the owner of phone number 248-860-3268.⁸¹

175. Zeoli was calling to offer Keller Williams real estate brokerage services to Plaintiff Miskokomon, who had a for sale by owner listing.

176. Plaintiff Miskokomon informed Zeoli that the property was sold and that he was not interested in his services.

⁸¹ <https://premium.whitepages.com/phone/1-248-860-3268>

177. Despite Miskokomon's clear stop request, Zeoli called Miskokomon's cell phone number again at 8:12 AM, on September 25, 2018.

178. In this call, Plaintiff Miskokomon again indicated to Zeoli that he wanted the unsolicited calls to stop.

179. Plaintiff Miskokomon never directly or indirectly consented to receiving solicitation calls from any of the Defendants.

180. The unauthorized telephone calls made by Keller Williams' agents at Keller Williams' and the other Defendants' direction, as alleged herein, have harmed all of the Plaintiffs in the form of annoyance, nuisance, and invasion of privacy, and disturbed the use and enjoyment of their phones, in addition to the wear and tear on the phones' hardware (including the phones' battery) and the consumption of memory on the phones.

181. Seeking redress for these injuries, Plaintiffs, on behalf of themselves and Classes of similarly situated individuals, bring suit under the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.*, which prohibits, among other things, unsolicited autodialed voice calls to cellular telephones, unsolicited calls using a pre-recorded voice, and unsolicited calls to telephone numbers registered on the DNC.

CLASS ALLEGATIONS

182. Plaintiffs this action pursuant to Federal Rules of Civil Procedure 23(b)(2) and 23(b)(3) and seek certification of the following five Classes:

Prerecorded No Consent Class: All persons in the United States who from four years prior to the filing of this action through trial (1) a Keller Williams real estate agent called, (2) on the person's cellular telephone number, (3) using a prerecorded voice message, and (4) whose telephone number was obtained from the same source that any Plaintiff's

number was obtained from.

Do Not Call Registry Class: All persons in the United States who from four years prior to the filing of this action through trial (1) one or more Keller Williams real estate agents called more than one time in the aggregate, (2) within any 12-month period, (3) where the person's telephone number had been listed on the National Do Not Call Registry for at least thirty days, (4) for substantially the same reason that Plaintiffs Wright, Valdes, Samataro, and/or Miskokomon were called, and (5) whose telephone number was obtained from the same source that any Plaintiff's number was obtained from.

Internal Do Not Call Class: All persons in the United States who from four years prior to the filing of this action through trial (1) one or more Keller Williams real estate agents called more than one time in the aggregate, (2) within any 12-month period, (3) for substantially the same reason that Plaintiffs Wright, Valdes, and/or Miskokomon were called, (4) including at least one call after the person requested that Keller Williams agents stop calling.

Michigan Pre-record Class: All persons in Michigan who from four years prior to the filing of this action through trial (1) a Keller Williams real estate agent called, (2) using a prerecorded message, (2) using a prerecorded voice message, and (3) whose telephone number was obtained from the same source that any Plaintiff's number was obtained from.

183. The following individuals are excluded from the Classes: (1) any Judge or Magistrate presiding over this action and members of their families; (2) Defendants, their subsidiaries, parents, successors, predecessors, and any entity in which any Defendant or its parents have a controlling interest and their current or former employees, officers and directors;

(3) Plaintiffs' attorneys; (4) persons who properly execute and file a timely request for exclusion from the Classes; (5) the legal representatives, successors or assigns of any such excluded persons; and (6) persons whose claims against any Defendant have been fully and finally adjudicated and/or released. Plaintiffs anticipate the need to amend the Class definitions following appropriate discovery.

184. **Numerosity:** On information and belief, there are hundreds, if not thousands of members of the Classes such that joinder of all members is impracticable.

185. **Commonality and Predominance:** There are many questions of law and fact common to the claims of Plaintiffs and the Classes, and those questions predominate over any questions that may affect individual members of the Classes. Common questions for the Classes include, but are not necessarily limited to the following:

- (a) whether Defendants directed agents to call consumers using an autodialer and/or prerecorded voice message;
- (b) whether Defendants' conduct constitutes a violation of the TCPA;
- (c) whether Defendants' agents utilized an automatic telephone dialing system to make calls;
- (d) whether Defendants' agents systematically made multiple telephone calls to consumers whose telephone numbers were registered with the National Do Not Call Registry;
- (e) whether Defendants' agents placed telemarketing calls after consumers requested to no longer be called;
- (f) whether Defendants' agents made calls to Plaintiffs without first obtaining prior express written consent to make the calls; and

(g) whether members of the Classes are entitled to treble damages based on the willfulness of Defendants' conduct.

186. **Adequate Representation:** Plaintiffs will fairly and adequately represent and protect the interests of the Classes, and have retained counsel competent and experienced in class actions. Plaintiffs have no interests antagonistic to those of the Classes, and Defendant has no defenses unique to any Plaintiff. Plaintiffs and their counsel are committed to vigorously prosecuting this action on behalf of the members of the Classes, and have the financial resources to do so. Neither Plaintiffs nor their counsel have any interest adverse to the Classes.

187. **Appropriateness:** This class action is also appropriate for certification because Defendant has acted or refused to act on grounds generally applicable to the Classes and as a whole, thereby requiring the Court's imposition of uniform relief to ensure compatible standards of conduct toward the members of the Classes and making final class-wide injunctive relief appropriate. Defendant's business practices apply to and affect the members of the Classes uniformly, and Plaintiffs' challenge of those practices hinges on Defendant's conduct with respect to the Classes as wholes, not on facts or law applicable only to either Plaintiff. Additionally, the damages suffered by individual members of the Classes will likely be small relative to the burden and expense of individual prosecution of the complex litigation necessitated by Defendant's actions. Thus, it would be virtually impossible for the members of the Classes to obtain effective relief from Defendant's misconduct on an individual basis. A class action provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court.

FIRST CLAIM FOR RELIEF

Telephone Consumer Protection Act

(Violation of 47 U.S.C. § 227)

**(On Behalf of Plaintiffs Wright, Valdes, Asher, and Samataro,
and the Prerecorded No Consent Class and Against Defendants
Keller Williams and KW Troy Market Center)**

188. Plaintiffs repeat and reallege the foregoing paragraphs of this Complaint and incorporate them by reference.

189. Defendants and/or their agents transmitted unwanted solicitation telephone calls to the cellular phone numbers of Plaintiffs Wright, Valdes, Asher, and Samataro and the other members of the Prerecorded No Consent Class using a prerecorded voice message.

190. These prerecorded voice calls were made *en masse* without the prior express written consent of the Plaintiffs and the other members of the Prerecorded No Consent Class.

191. Defendants directed, apparently authorized, and/or ratified the agents' calls.

192. Defendants have, therefore, violated 47 U.S.C. § 227(b)(1)(A)(iii). As a result of Defendants' conduct, Plaintiffs and the other members of the Prerecorded No Consent Class are each entitled to a minimum of \$500 in damages, and up to \$1,500 in damages, for each violation.

SECOND CLAIM FOR RELIEF

Telephone Consumer Protection Act

(Violation of 47 U.S.C. § 227)

**(On Behalf of Plaintiffs Wright, Valdes, Samataro, and Miskokomon
and the Do Not Call Registry Class and Against Defendants
Keller Williams, KW M77, and KW Troy Market Center)**

193. Plaintiffs repeat and reallege the foregoing paragraphs of this Complaint and incorporate them by reference.

194. The TCPA's implementing regulation, 47 C.F.R. § 64.1200(c), provides that "[n]o person or entity shall initiate any telephone solicitation" to "[a] residential telephone subscriber who has registered his or her telephone number on the national do-not-call registry of persons who do not wish to receive telephone solicitations that is maintained by the federal government."

195. 47 C.F.R. § 64.1200(e), provides that § 64.1200(c) and (d) "are applicable to any person or entity making telephone solicitations or telemarketing calls to wireless telephone numbers."⁸²

196. Defendants violated 47 C.F.R. § 64.1200(c) by initiating, or causing to be initiated, telephone solicitations to telephone subscribers such as Plaintiffs Wright, Valdes, Samataro, and Miskokomon and the Do Not Call Registry Class members who registered their respective telephone numbers on the National Do Not Call Registry, a listing of persons who do not wish to receive telephone solicitations that is maintained by the federal government.

197. Defendants directed, apparently authorized, and/or ratified the agents' calls.

198. As a result of Defendant's conduct as alleged herein, Plaintiff Wright, Plaintiff Valdes and the Do Not Call Registry Class are each entitled to a minimum of \$500 in damages, and up to \$1,500 in damages, for each violation.

THIRD CLAIM FOR RELIEF

Telephone Consumer Protection Act

(Violation of 47 U.S.C. § 227)

(On Behalf of Plaintiffs Wright, Valdes, and Miskokomon and

⁸² *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 18 FCC Rcd 14014 (2003) Available at https://apps.fcc.gov/edocs_public/attachmatch/FCC-03-153A1.pdf

the Internal Do Not Class and Against Defendants Keller Williams and KW M77)

199. Plaintiffs repeat and reallege the foregoing paragraphs of this Complaint and incorporate them by reference.

200. Under 47 C.F.R. § 64.1200(d), “[n]o person or entity shall initiate any call for telemarketing purposes to a residential telephone subscriber unless such person or entity has instituted procedures for maintaining a list of persons who request not to receive telemarketing calls made by or on behalf of that person or entity. The procedures instituted must meet the following minimum standards:

(1) Written policy. Persons or entities making calls for telemarketing purposes must have a written policy, available upon demand, for maintaining a do-not-call list.

(2) Training of personnel engaged in telemarketing. Personnel engaged in any aspect of telemarketing must be informed and trained in the existence and use of the do-not-call list.

(3) Recording, disclosure of do-not-call requests. If a person or entity making a call for telemarketing purposes (or on whose behalf such a call is made) receives a request from a residential telephone subscriber not to receive calls from that person or entity, the person or entity must record the request and place the subscriber's name, if provided, and telephone number on the do-not-call list at the time the request is made. Persons or entities making calls for telemarketing purposes (or on whose behalf such calls are made) must honor a residential subscriber's do-not-call request within a reasonable time from the date such request is made. This period may not exceed thirty days from the date of such request. If such requests are recorded or maintained by a party other than the person or entity on whose behalf the telemarketing call is made, the person or entity on whose behalf the telemarketing call is made will be liable for any failures to honor the do-not-call request. A person or entity making a call for telemarketing purposes must obtain a consumer's prior express permission to share or forward the consumer's request not to be called to a party other than the person or entity on whose behalf a telemarketing call is made or an affiliated entity.

(4) Identification of sellers and telemarketers. A person or entity making a call for telemarketing purposes must provide the called party with the name of the individual caller, the name of the person or entity on whose behalf the call is being made, and a telephone number or address at which the person or entity may be

contacted. The telephone number provided may not be a 900 number or any other number for which charges exceed local or long distance transmission charges.

(5) Affiliated persons or entities. In the absence of a specific request by the subscriber to the contrary, a residential subscriber's do-not-call request shall apply to the particular business entity making the call (or on whose behalf a call is made), and will not apply to affiliated entities unless the consumer reasonably would expect them to be included given the identification of the caller and the product being advertised.

(6) Maintenance of do-not-call lists. A person or entity making calls for telemarketing purposes must maintain a record of a consumer's request not to receive further telemarketing calls. A do-not-call request must be honored for 5 years from the time the request is made.

201. Agents calling on behalf of Defendants placed calls to Plaintiffs Wright, Valdes, and Miskokomon and members of the Internal Do Not Call Class without implementing internal procedures for maintaining a list of persons who request not to be called by the entity and/or by implementing procedures that do not meet the minimum requirements to allow the Defendants or their agents to initiate telemarketing calls.

202. Defendants directed, apparently authorized, and/or ratified the agents' calls.

203. The TCPA provides that any "person who has received more than one telephone call within any 12-month period by or on behalf of the same entity in violation of the regulations prescribed under this subsection may" bring a private action based on a violation of said regulations, which were promulgated to protect telephone subscribers' privacy rights to avoid receiving telephone solicitations to which they object. 47 U.S.C. § 227(c)(5).

204. The Defendants have, therefore, violated 47 U.S.C. § 227(c)(5). As a result of Defendants' conduct, Plaintiffs and the other members of the Internal Do Not Call Class are each entitled to a minimum of \$500 in damages, and up to \$1,500 in damages, for each violation.

FOURTH CLAIM FOR RELIEF

(Violation of MCLS § 484.125)

**(On Behalf of Plaintiff Samataro and the Michigan Pre-Record Class
and Against Defendants Keller Williams and KW Troy Market Center)**

205. Plaintiffs repeat and reallege the foregoing paragraphs of this Complaint and incorporate them by reference.

206. Defendants' agents made unwanted solicitation telephone calls to Plaintiff Samataro and the other members of the Michigan Prerecorded Class using a prerecorded voice.

207. These prerecorded voice calls were made *en masse* without the consent of the Plaintiff Samataro and the other members of the Michigan Prerecorded Class.

208. Defendants directed, apparently authorized, and/or ratified the agents' calls.

209. Defendants have, therefore, violated MCLS § 484.125. As a result of Defendants' conduct, Plaintiff Samataro and the other members of the Michigan Pre-Record Class are each entitled to \$1,000 in damages for each violation together with reasonable attorneys' fees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of the Classes, pray for the following relief:

210. An order certifying this case as a class action on behalf of the Classes as defined above; appointing Plaintiffs as the representatives of the Classes; and appointing their attorneys as Class Counsel;

211. An award of damages, fees, and costs;

212. An order declaring that Defendants' actions, as set out above, violate the TCPA;

213. An injunction requiring Defendants to cease all unsolicited calling activity, and to otherwise protect the interests of the Classes; and

214. Such further and other relief as the Court deems just and proper.

JURY DEMAND

Plaintiffs request a jury trial.

Respectfully submitted,

DATED this 18th day of October, 2021. /s/ Avi R. Kaufman

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Attorneys for Plaintiffs and the putative Classes

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 18, 2021, I electronically filed the foregoing with the Clerk of the Court using CM/ECF, and the filings were served on all counsel of record via transmission of Notice of Electronic Filing generated by CM/ECF, with the exception of the below who are being served this day by mail:

George T. Blackmore
Blackmore Law PLC
21411 Civic Center Drive
Suite 200
Southfield, MI 48076

/s/ Avi R. Kaufman